IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 438 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

ASHOK JETHALAL LADHANI, (DISTRIBUTOR & PARTNER)

Appearance:

MR.DP JOSHI, PUBLIC PROSECUTOR for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1-4

NOTICE SERVED for Respondent No. 5-7,9

MR JM BUDDHBHATTI for Respondent No. 8

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/07/2001

ORAL JUDGEMENT

#. In this old Criminal Revision pending since 1997, the impugned order dated 31-5-1997 of the Chief Judicial Magistrate, Junagadh is under challenge by the State of Gujarat.

#. Through the impugned order, the learned Chief Judicial Magistrate, while interpreting amended Rule-32(e) of the Rules framed under the Prevention of Food Adulteration Act, 1954, took a view that there is no distinction between the old Rule-32(e), which was declared ultra vires by the Apex Court in DWARKANATH & ORS. v. MUNICIPAL CORPORATION DELHI AIR 1971 S.C. 1844 and the amended Rule-32(e) which was substituted by Notification No.GSR 304(E) dated 4-6-1997, which came into effect from 4-6-1997 and as such, the offence of misbranding against the respondent is prima facie not made out and he was acquitted. Shri DP Joshi, learned APP appearing for the revisionist argued that the learned Chief Judicial Magistrate had no jurisdiction to declare the amended Rule-32(e) framed under the Prevention of Food Adulteration Act ultra vires and it is either for the Apex Court or for the High Court to declare such rule ultra vires. He, therefore, argued that the order of the learned Chief Judicial Magistrate is patently illegal and without jurisdiction. In reply to this argument, learned counsel for the respondeat Shri Buddhbhatti suggested that since the recording of evidence has not yet started, the revision may be decided with direction that it may be left open to the accused, respondent to take up the plea as to whether the offence of misbranding even under the amended Rule-32(e) is made out or not and the trial may proceed accordingly. The suggestion of Shri Buddhbhatti is in the interest of justice and also in the interest of prosecution as well as of defence.

#. In view of the above discussions and suggestions of Shri Buddhbhatti, the revision is allowed. The impugned order is set-aside. The case is remanded to the learned Chief Judicial Magistrate, Junagadh with direction to proceed with the trial. It shall, however, is left open to the respondent to take up the plea, whether the offence under sec.32(e) of the Rules is prima facie made out or not.

July 9, 2001. (D.C. Srivastava, J.)

/sakkaf